

STATE OF MICHIGAN
COURT OF APPEALS

ADDINA ALI VANDER WOUDE-
LEERENTVELD,

UNPUBLISHED
April 5, 2005

Plaintiff-Counterdefendant-
Appellee,

v

RUDOLF ALBERTUS LEERENTVELD,

No. 241502
Kalamazoo Circuit Court
LC No. 98-003254-DM

Defendant-Counterplaintiff-
Appellant.

AFTER REMAND

Before: Smolenski, P.J., and Sawyer and Borrello, JJ.

PER CURIAM.

This matter is before this Court following remand to the trial court. Previously, defendant appealed the trial court's division of the parties marital assets, and we remanded the matter to the trial court because the trial court failed to assign value to property in dividing the marital property and failed to articulate a rationale for its decisions regarding the property division. *Vander Woude-Leerentveld v Leerentveld*, unpublished opinion per curiam of the Court of Appeals, issued December 18, 2003 (Docket No. 241502). In our opinion remanding the matter, we directed the trial court to (1) assign value to the property distributed and (2) clearly state in conformance with established principles the rationale for the property division. We also instructed the trial court that if it assigned fault in the matter, it must state its reasoning and the degree to which fault entered into the property division. Following our remand of the matter, the trial court rendered an opinion on December 28, 2004. We affirm the decisions of the trial court on remand.

In its written opinion on remand, the trial court concluded that there were three issues concerning which it had not made specific findings of value. The trial court listed those items as (1) the value of the personal property and household items stored in the Netherlands, (2) the value of personal property and household items in the United States, and (3) the value of defendant's pension plans. According to the trial court's opinion on remand, the parties stipulated that the value of the stored personal property and household items was \$20,150 and stipulated that defendant's pension accrued during the marriage would be divided equally between the parties.

We review a property distribution in a divorce case by first reviewing the trial court's factual findings for clear error and then determining "whether the dispositional ruling was fair and equitable in light of the facts." *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). A division of property in a divorce case need not be equal; however, it must be equitable and "roughly congruent." *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). "Any significant departure from that goal should be supported by a clear exposition of the trial court's rationale." *Id.*, quoting *Knowles v Knowles*, 185 Mich App 497, 501; 462 NW2d 777 (1990). Generally, we will affirm a property distribution unless we are "left with the firm conviction that the distribution was inequitable." *Hanaway, supra* at 292.

Defendant contends that on remand, the trial court did not place a value on a number of assets and liabilities that were distributed in the trial court's March 12, 2004 order. Defendant further argues that the trial court failed to clearly articulate its rationale for the property division as required by the remand order of this Court and failed to address the extent to which fault impacted the property division. While we agree with defendant that the trial court did not extensively revisit the issue of assignment of fault,¹ given the trial court's findings on remand and the amount of time that has elapsed in this case and the equities attached thereto, we find there is sufficient evidence from which this Court may render a decision.

At the outset, we observe that the record does not support defendant's conclusion that, in dividing the marital estate, the trial court awarded eighty-three percent of the marital assets to plaintiff and only seventeen percent to defendant. While the property division is more favorable to plaintiff, defendant's calculations of the percentages of the marital estate awarded to the parties are simply inaccurate. Moreover, it appears that defendant was not forthcoming in his valuation of assets and liabilities. For example, defendant claimed that there were certain "debts" totaling approximately \$94,000 owed to defendant's employer, and the trial court assigned these alleged debts to defendant in its property division without placing any value on them. However, the trial court determined that it was speculative whether defendant would ever have to repay these "debts" because there was evidence that these amounts were actually attributable as an advance on his income, rather than funds loaned to him from his employer.

Defendant challenges the trial court's division of the marital estate and contends that the trial court erred in awarding plaintiff a disproportionate and inequitable amount of the marital property. According to defendant, the significant disparity in the percentage of property awarded to plaintiff and defendant renders the trial court's property division patently inequitable. To support his argument that a trial court's property division may be patently inequitable based on the disparity of the award, defendant relies on two unpublished decisions of this Court, *Nagtzaam v Nagtzaam*, unpublished opinion per curiam of the Court of Appeals, issued June 21, 2002 (Docket No. 229150), and *Campbell v Campbell*, unpublished opinion per curiam of the

¹ The trial court states on page two of its opinion that it had previously made a finding that the "Defendant's conduct during the marriage constituted the reason for the breakdown of the marriage relationship." In its conclusions of law the trial court stated the "[t]he Court is not convinced that it would have reached a different conclusion based on the factors set forth in *Sparks v Sparks*, 440 Mich 141 (1992)."

Court of Appeals, issued July 2, 1999 (Docket No. 210256). We reject defendant's contention that *Nagtzaam* and *Campbell* stand for the proposition that a significant mathematical disparity between awards alone can cause a property division to be inequitable. Moreover, we find that the facts in *Nagtzaam* and *Campbell* are distinguishable from the facts and equities of the instant case. In *Nagtzaam*, this Court rejected the plaintiff's request for a disproportionate award of marital assets based on fault because the defendant's conduct in that case did not warrant a disproportionate property award in the plaintiff's favor. In contrast, in the instant case, defendant's conduct, the needs and circumstances of the parties, the earning abilities of the parties, and general principles of equity did warrant a disproportionate award in plaintiff's favor. *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992). Similarly, we conclude that the facts in *Campbell* are distinguishable from the facts and equities in this case.

Moreover, we reject defendant's contention that the trial court improperly sought to punish him for his extramarital affairs. Defendant is correct that the court's role in dividing the property in a divorce action "is to achieve equity, not to 'punish' one of the parties." *Sands v Sands*, 442 Mich 30, 36-37; 497 NW2d 493 (1993). However, our review of the record does not support defendant's contention that the trial court gave defendant's fault undue or disproportionate weight in dividing up the marital estate between the parties.

The trial court properly considered the factors that are relevant to the disposition of marital assets in a divorce action as outlined in *Sparks*, *supra* at 159-160, in both its original decision and order as well as its decision on remand. While the trial court mentioned defendant's infidelity and physical abuse of plaintiff, it did not place undue emphasis on the issue of defendant's fault. Rather than making fault a focal issue, the trial court simply discussed it as one of the factors contributing to the ultimate distribution of assets and liabilities between the parties. In addition to the issue of fault, the trial court also discussed other relevant factors. The trial court found that plaintiff had been unable to complete her education during the marriage because she maintained the home and raised three children while defendant earned his degrees and because the family was constantly relocating for defendant's work. The trial court also recognized that plaintiff was in an "economically vulnerable" position because she was dependent on defendant for household expenses and basic necessities. In our previous opinion in this case, we observed that plaintiff's employment opportunities were seriously undermined by defendant's decision to help his girlfriend from China receive a green card rather than helping plaintiff obtain her green card. As a result, plaintiff's earning ability was negatively affected, and plaintiff was left in an economically vulnerable position. We agree with the trial court that, under the circumstances, it would have been a considerable time until plaintiff's earning potential could reach the level of affluence that the parties had obtained during the marriage. After reviewing the record, we reject defendant's contention that the trial court unfairly punished defendant for his conduct or placed undue or disproportionate emphasis on the issue of defendant's fault. Rather, the record reveals that the trial court properly considered other relevant factors in dividing the marital assets as our Supreme Court outlined in *Sparks*.

As we articulated above, a division of marital property must be equitable and "roughly congruent." *Jansen*, *supra* at 171. Our review of the record reveals that, excluding the award of

the parties' marital home to plaintiff,² the trial court's property division was roughly congruent. Furthermore, the trial court clearly articulated that its rationale for awarding plaintiff the marital home was to maintain stability for the parties' children. We agree with this rationale and further note that the additional factors we discussed above, including defendant's conduct, the needs and circumstances of the parties, the earning abilities of the parties, and general principles of equity, warranted the award of the parties' home to plaintiff. *Sparks, supra* at 159-160. Because the parties' home is the cause of the disparity in the property division award, and the trial court clearly explained its rationale in awarding the home to plaintiff, we conclude that the ultimate division of the marital estate was equitable. After reviewing the lower court record, we are not left with the firm conviction that the property distribution was inequitable.

Affirmed.

/s/ Michael R. Smolenski

/s/ David H. Sawyer

/s/ Stephen L. Borrello

² The trial court assigned a value of \$166,048 to the marital home, after making deductions for the mortgage and taxes.